

March 16, 1955.

HONORABLE D. KNOWLTON READ, *Chairman*  
*Narcotic Control Commission,*  
 State House,  
 Trenton 7, New Jersey.

MEMORANDUM OPINION P-7.

DEAR MR. READ:

You have requested our opinion as to the effect of the mandatory sentencing provision of N. J. S. 2A:168-1 on the provisions of N. J. S. 24:18-47 providing the penalties for violations of the Uniform Narcotic Drug Law (Chapter 18 of Title 24 of the Revised Statutes).

N. J. S. 2A:168-1 permits a sentencing court, where it deems it to be in the best interests of the defendant and of the public, to suspend the imposition or execution of sentence and place the defendant on probation for not less than 1 year and not more than 5 years.

However, as to sentences imposed for a violation of any provision of the Uniform Narcotic Drug Law (Chapter 18 of Title 24 of the Revised Statutes), N. J. S. 2A:168-1 provides:

"The provisions of this section shall not permit the suspension of the imposition or execution of any sentence and the placing of the defendant on probation after conviction or after a plea of guilty or non vult for violation of any provision of chapter eighteen of Title 24 of the Revised Statutes except in the case of a first offender."

It is clear that N. J. S. 2A:168-1 does not permit a judge sentencing a defendant for a violation of Chapter 18 of Title 24, to suspend the imposition of the jail sentence if the defendant is a second or a subsequent offender and that he must impose a jail sentence for the period set forth in R. S. 24:18-47.

Very truly yours,

GROVER C. RICHMAN, JR.,  
*Attorney General.*

By: FRANCIS J. TARRANT,  
*Deputy Attorney General.*

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April 11, 1955.

COLONEL JOSEPH D. RUTTER,  
*Superintendent of State Police,*  
 West Trenton, New Jersey.

MEMORANDUM OPINION P-8.

DEAR SIR:

You have asked for our opinion in respect to the following questions relating to the statutes of limitation.

1. Under Title 2A:159-3, is the limitation on this type of crime (public officials, etc.) still five years?

N. J. S. 2A:159-3 provides as follows:

"Any person holding or having held, or who may hereafter hold, any public office, position or employment, either under this state or under any

political subdivision or agency thereof, whether elective or appointive, or any person being or having been, or who may hereafter be, an executor, administrator, guardian, trustee or receiver, or any officer or director holding or having held, or who may hereafter hold, office, position or employment with any public, quasi public or public quasi corporation or with any charitable, religious or fraternal organization or with any mutual benefit society or association for nonpecuniary benefit or with any bank or building and loan association or savings and loan association or with any trust, insurance, mortgage, guaranty, title or investment company, may be prosecuted, tried and punished for any forgery, larceny or embezzlement, or conspiracy to commit forgery, larceny or embezzlement, or conspiracy to defraud, committed while in such office, position or employment, where the indictment has been or may be found within five (5) years from the time of committing such offense. This section shall not apply to any person fleeing from justice."

There has been no legislative change in the provisions of the above since May 5, 1938, when the foregoing section became effective, by reason of which its provisions are the existing law on the subject.

2. Under Title 2A:159-1, is the limitation of prosecution for the crime of Treason still three years?

N. J. S. 2A:159-1 provides as follows:

"No person shall be prosecuted, tried or punished for treason, unless the indictment therefor shall be found within 3 years next after the treason shall be done or committed. This section shall not apply to any person fleeing from justice."

Since treason is punishable with death (N. J. S. 2A:148-1), the provisions of N. J. S. 2A:159-2, as amended, (see below) do not apply, for the reason that crimes punishable with death are expressly excluded therefrom.

The answer to your question is in the affirmative.

3. Are gambling crimes committed prior to the enactment of N. J. S. 2A:159-4 still in the same two-year limitation as other crimes under section 2A:159-2, prior to its amendment effective June 30, 1953?

Prior to the enactment of N. J. S. 2A:159-4, (effective April 23, 1952), the statute of limitations on prosecutions for all crimes including gambling and gaming (crimes punishable with death and those committed by public officials excepted) fixed a period of two years (N. J. S. 2A:159-2), within which time an indictment must be found.

N. J. S. 2A:159-2, as amended effective June 30, 1953, provides as follows:

"Except as otherwise expressly provided by law no person shall be prosecuted, tried or punished for any offense not punishable with death, unless the indictment therefor shall be found within five years from the time of committing the offense or incurring the fine or forfeiture. This section shall not apply to any person fleeing from justice."

Prosecution of gambling offenses committed prior to April 23, 1950, where no indictment has been found, are now barred by the statutes of limitation.

4. Are all gambling crime limitations now five years?

N. J. S. 2A:159-4, which became effective April 23, 1952, provides as follows:

"Any person who shall, contrary to law, gamble or operate any gambling device, practice or game of chance, or conduct a lottery or sell any lottery ticket, may be prosecuted, tried and punished therefor where the indictment has been or may be found within four years from the time of com-

mitting such offense. The limitation of any such criminal prosecution shall not apply to any person fleeing from justice."

N. J. S. 2A:159-4 was amended, effective July 20, 1953, and reads as follows:

"Any person who shall, contrary to law, gamble or operate any gambling device, practice or game of chance, or make or take what is commonly known as a book, upon the running, pacing or trotting, either within or without this State, of any horse, mare or gelding, or conduct the practice commonly known as bookmaking or pool selling, or keep a place to which persons may resort for engaging in any such practice, or for betting upon the event of any horse race or other race or contest, either within or without this State, or for gambling in any form, or conduct a lottery or sell any lottery ticket, may be prosecuted, tried and punished therefor where the indictment has been or may be found within five years from the time of committing such offense. The limitation of any such criminal prosecution shall not apply to any person fleeing from justice."

The statute of limitation on prosecutions for gambling crimes is as follows:

- a. Crimes committed prior to April 23, 1950, where no indictment has been found, are barred;
- b. Crimes committed after April 23, 1950 are covered by the five year statute of limitations. The statute fixing the period of limitation at four years has no effect presently since all crimes committed after April 23, 1950 were not barred from prosecution prior to the enactment of the five year limitation on July 20, 1953. "An Act extending the time for prosecution of certain offenses from two years to five, though it had no effect on cases in which the limitation had expired, was operative on those where the limitation had not expired prior to its enactment." (*State v. Miller*, 4 N. J. L. J. 252 (Middlesex Oyer & Terminer, May Term 1881).

5. Are any crimes covered by R. S. 2A:159-2 committed prior to the enactment of the amendment of 1953 still to be listed and carried for two years, or does the limitation automatically increase to five years?

All crimes, excluding gambling, those punishable with death and those committed by public officials are subject to the following limitations on the prosecution:

- a. Crimes committed prior to June 30, 1951 are barred by N. J. S. 2A:159-2.
- b. Crimes committed after June 30, 1951 are covered by the five year statutes of limitation (N. J. S. 2A:159-2, as amended) and are not barred.

It is to be noted that all of the above statutes of limitation do not apply in favor of "any person fleeing from justice."

Yours very truly,

GROVER C. RICIMAN, JR.,  
*Attorney General.*

By: SAUL N. SCHECHTER,  
*Deputy Attorney General.*